

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP(T) No. 6008 of 2008.

Decided on: 16.06.2010.

Daulat Ram Thakur.

...Petitioner.

-Versus-

State of Himachal Pradesh and another.

...Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?¹ Yes.

For the petitioner. : Mrs. Ranjana Parmar, Advocate.

For the respondents : Mr. Vikas Rathore, Deputy
Advocate General with Mr. R.P.
Singh, Assistant Advocate General.

Rajiv Sharma, Judge (Oral):

Petitioner has obtained diploma in Physical Education in the year, 1987. The State Government has taken a decision on 14th July, 1998 to fill up the vacancies D.P.E. School-Cadre on batch-wise basis. Petitioner's name was sponsored by the employment exchange and he was called for interview on 3rd May, 1999. However, the appointment letter has not been issued to the petitioner, on the ground that he has not obtained "no objection certificate" from his employer where he was working as P.E.T.

2. Mrs. Ranjana Parmar, learned counsel for the petitioner has drawn the attention of the Court to Annexure A-9, dated 12.04.1999, whereby only educational certificates were to be supplied by the candidates who were to be considered on batch-wise basis for the post of D.P.E. School-Cadre in the pay scale of

¹ *Whether the reporters of the local papers may be allowed to see the judgment? Yes.*

Rs.5480-8925/-. There was no requirement that the candidate was supposed to supply “no objection certificate” alongwith these testimonials/certificates. In fact, District Education Officer has issued “no objection certificate” to the petitioner vide Annexure A-14 on 26th June, 1999. The action of the respondents of not offering appointment to the petitioner only on the ground that he had failed to obtain “no objection certificate” from the employer is declared illegal, arbitrary, thus, violative of Article 14 of the Constitution of India. The petitioner has been rightly considered for the post in question on batch-wise basis. He has appeared in the interview on 03.05.1999. He has supplied all the certificates/testimonials, as required as per Annexure A-9. It is settled law by now that the candidate does not get indefeasible right to be appointed on the basis of selection, however, it is equally well settled that when the decision is taken not to offer appointment, the same must be supported by cogent reasons. In the present case, the reason/explanation given by the respondent-State is not legally tenable.

3. Their Lordships of the Hon’ble Supreme Court in **Asha Kaul (Mrs) and another** versus **State of Jammu and Kashmir and others**, (1993) 2 Supreme Court Cases 573 have held as under:

“8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment (State of Haryana v. Subhash Chander Marwaha Mani Subrat Jain v. State of Haryana, State of Kerala v. A. Lakshmikutty) but that is only one aspect of the matter. The other aspect is the obligation of the

government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the Commission to select a particular number of candidates for a particular category, - in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the government the government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution bench of this court in *Shankarsan Dash v. Union of India* where the earlier decisions of this court are also noted. The following observations of the court are apposite:

"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the

candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha*, *Neelima Shangla v. State of Haryana* or *Jatendra Kumar v. State of Punjab*."

Accordingly, the writ petition is allowed. The respondents are directed to consider the case of the petitioner for appointment to the post of D.P.E. on the basis of interview held on 03.05.1999 with all consequential benefits within a period of six weeks from today. No costs.

(Rajiv Sharma)
Judge

June 16, 2010.
(bhupender)

